IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

CRL.A.No. 986 of 2002()

SC.268/2001 of ADDL.SESSIONS COURT (ADHOC)-II, KOTTAYAM
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APPELLANT: ACCUSED

RAGHAVAN S/O. AYYAPPAN, CHILAMBANKUNEL
VEEDU, KUZHIMBALLIL BHAGOM, MANNAM KARA,
POONJAR THEKKEKARA VILLAGE, MEENACHIL TALUK

BY ADV. SRI.BIMAL K.NATH

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.A.No.986/2002

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Dated this the 27th day of September, 2007

J U D G M E N T

The appellant is the accused who stands convicted for the offence under Section 55(g) of the Abkari Act and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,00,000/- and in default to undergo simple imprisonment for 60 days.

2. The prosecution case is that on a search conducted in the house of the accused on 19/10/2000 at 9.30 a.m by the Preventive Officer and party, 22 litres of wash, a sealing machine, packets containing plastic covers, a empty can, a tin containing coloured powder, a bottle containing Orange essence and a packet containing Ammonium Sulphate were recovered. PWs.1 and 2 the independent witnesses to the Ext.P1 mahazar did not support the prosecution version and was treated as hostile. The only occurrence witness who supported the prosecution is the PW.3 the Preventive Officer. The sample collected at the spot allegedly sent for chemical analysis was found to contain ethyl alcohol.

3. It is the contention of the counsel for the appellant that the accused has been falsely implicated on account of the enmity of one of the Preventive Officers, who is the neighbour of the accused. It is submitted that the accused at the time of occurrence was 78 years of age and right now he is aged 84. It is pointed out that in Ext.P1 mahazar it is written that the accused ran away and, hence, he could not be arrested. It is pointed out that the above version is totally false as the excise officials could have easily arrested a person aged 78 years. The search was conducted in the absence of the accused or any of the other residents from the house. It is also pointed out that Ext.P5, the certificate issued by the Panchayat Secretary wherein, it is mentioned that the particular dwelling unit is owned by the accused has not been proved. The Secretary was not examined. Ext.P5 is only a certificate issued by the Secretary. It is also pointed out that either the search memorandum or copy of it allegedly sent to the court before commencement of search was not produced. It is also contended that MOs.5, 6 and 7, coloured powder, bottle containing Orange essence, packet containing Ammonium Sulphate were not sent for chemical analysis.

I find that as to the alleged running away of the accused on sighting the excise squad PW.3, the Preventive Officer has not testified. As pointed out by the counsel for the appellant, the version that the accused ran away mentioned in the mahazar appears false in view of the admitted fact that he was then aged 78 years. Ext.P5 certificate as to the ownership of the house was also not properly proved. I find that in view of the above aspects, the accused is entitled for the benefit of doubt. The conviction and sentence imposed by the court below is set aside. The accused is acquitted.

The criminal appeal is allowed as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.A.No.986/2002

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J U D G M E N T

27th September, 2007